

Draft Strawman – Alternative Management Structure – REVISION 1

Strawman does not address the following themes/questions yet to be resolved:

- Is the 300,000 gallon per month permitting threshold the right threshold? How will unpermitted withdrawals be addressed?
 - Prior legislative efforts involved evaluating the threshold on a cumulative basis for subdivisions
- How do we evaluate new alternative water supply projects on a holistic basis?
 - Looking at solutions on a regional basis
 - Including analysis of the entire water balance (surface water and groundwater)
 - Evaluating impacts pro and con on other regulatory programs (stormwater, water quality, water supply)
 - Stakeholder involvement
 - How/when to trigger planning and development of alternative sources?

Strawman does address the following:

- Provision for voluntary allocation agreements to control in lieu of permits (but to be approved by DEQ)
- Synced up permitting cycles to allow for greater collaboration
- Trigger for when voluntary allocation agreements would apply
- Opportunities for greater stakeholder involvement

Strawman modeled after:

- Surface Water Management Act
- Agreement for Management of the Snake Valley Groundwater System
- Interstate Commission on the Potomac River Basin agreements

Strawman of 4/29/2016 Revision 1

Possible Changes to Groundwater Management Act

62.1-255. Definitions.

As used in this chapter, unless the context requires otherwise:

The new definition of “Alternative Water Supply” discusses SWCB “consultation with” water users. That could be clarified/explained further – what constitutes consultation? What is the Board required to do with that information, if anything? Also, I recommend that the definition include some reference to the SWCB deciding how much groundwater is available based on an assessment of *sustainable* use (or something to indicate that it’s not just how much water is there, but how much can be used in a sustainable fashion to preserve the aquifer for future use). (Suggested Edits/Comments – Elizabeth Andrews – Virginia Coastal Policy Center)

Formatted: Indent: Left: 0", First line: 0"

“Available Groundwater Supply” means that total amount of Groundwater available for withdrawal from a designated groundwater management area as determined by the Board after consultation with water users within the area.

"Beneficial use" includes, but is not limited to, domestic (including public water supply), agricultural, commercial, and industrial uses.

"Board" means the State Water Control Board.

"Ground water" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

"Ground water withdrawal permit" means a certificate issued by the Board permitting the withdrawal of a specified quantity of ground water in a ground water management area.

"Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this Commonwealth or any other state or country.

62.1-256. Duties of Board.

The Board shall have the following duties and powers:

1. To issue ground water withdrawal permits or approve voluntary agreements as contemplated in Section 62.1-266.1 in accordance with regulations adopted by the Board;

2. To issue special orders as provided in § 62.1-268;

3. To study, investigate and assess ground water resources and all problems concerned with the quality and quantity of ground water located wholly or partially in the Commonwealth, and to make such reports and recommendations as may be necessary to carry out the provisions of this chapter;

4. To determine the Available Groundwater Supply as determined through use of the Hydro VA model and after consultation with water users subject to the groundwater withdrawal permitting requirements. Actual monitoring data shall also be considered as part of the process for determining the Available Groundwater Supply. Such a determination shall be made every 5 years;

4. To determine the Available Groundwater Supply as determined with appropriate analytical tools using groundwater monitoring data, and after consultation with water users subject to the groundwater withdrawal permitting requirements. Such a determination shall be made every 5 years; (Suggested edits – Susan Douglas/VDH – Recommend specific software in the statute.)

In the new Sec. 62.1-256(4), “HydroVA” needs to be defined, and “consultation with” again could be explained further. (Suggested Edits/Comments – Elizabeth Andrews – Virginia Coastal Policy Center)

4. To require any person withdrawing ground water for any purpose anywhere in the Commonwealth, whether or not declared to be a ground water management area, to furnish to the Board such information with regard to such ground water withdrawal and the use thereof as may be necessary to carry out the provisions of this chapter, excluding ground water withdrawals occurring in conjunction with activities related to exploration for and production of oil, gas, coal or other minerals regulated by the Department of Mines, Minerals and Energy;

5. To prescribe and enforce requirements that naturally flowing wells be plugged or destroyed, or be capped or equipped with valves so that flow of ground water may be completely stopped when said ground water is not currently being applied to a beneficial use;

6. To enter at reasonable times and under reasonable circumstances, any establishment or upon any property, public or private, for the purposes of obtaining information, conducting surveys or inspections, or inspecting wells and springs, and to duly authorize agents to do the same, to

ensure compliance with any permits, standards, policies, rules, regulations, rulings and special orders which it may adopt, issue or establish to carry out the provisions of this chapter;

7. To issue special exceptions pursuant to § [62.1-267](#);

8. To adopt such regulations as it deems necessary to administer and enforce the provisions of this chapter; and

9. To delegate to its Executive Director any of the powers and duties invested in it to administer and enforce the provisions of this chapter except the adoption and promulgation of rules, standards or regulations; the revocation of permits; and the issuance, modification, or revocation of orders except in case of an emergency as provided in subsection B of § [62.1-268](#).

62.1-257. When Board may initiate a ground water management area study proceeding; hearing required.

A. The Board upon its own motion or, in its discretion, upon receipt of a petition by any county, city or town within the area in question, may initiate a ground water management area proceeding, whenever in its judgment there may be reason to believe that:

1. Ground water levels in the area are declining or are expected to decline excessively;
2. The wells of two or more ground water users within the area are interfering or may reasonably be expected to interfere substantially with one another;
3. The available ground water supply has been or may be overdrawn; or

[3. The Available Ground Water Supply has been or may be overdrawn; or \(Suggested Edit – Susan Douglas/VDH\)](#)

4. The ground water in the area has been or may become polluted. Such pollution includes any alteration of the physical, chemical or biological properties of ground water which has a harmful or detrimental effect on the quality or quantity of such waters.

B. If the Board finds that any one of the conditions required above exists, and further finds that the public welfare, safety and health require that regulatory efforts be initiated, the Board shall by regulation declare the area in question to be a ground water management area. The Board shall include in its regulation a definition of the boundaries of the ground water management

area. The Board shall mail a copy of the regulation to the mayor or chairman of the governing body of each county, city or town within which any part of the area lies.

62.1-258. Use of ground water in ground water management area; registration of well construction required.

It is unlawful in a ground water management area for any person to withdraw, attempt to withdraw, or allow the withdrawal of any ground water, other than in accordance with a ground water withdrawal permit, except for withdrawals made pursuant to a voluntary agreement approved by the Board pursuant to 62.1-266.1, withdrawals exempt from permitting requirements pursuant to -or as provided in- § 62.1-259, or as provided in subsections C, D and F of § 62.1-260, and subsection C of § 62.1-261. Each private well, as defined in § 32.1-176.3, constructed in a ground water management area shall be registered by the certified water well systems provider with the Board within 30 days of the completion of the construction. Such registration shall be in a format prescribed by the Board; however, the Board and the Board of Health shall develop joint private well forms and processes.

Health shall develop joint well forms and processes. (Suggested Edits – Susan Douglas/VDH – The revised GW-2 form is to be used for public and private wells now.)

The Department of Health shall provide the Board annually with a list of private wells that have received permits during the previous year. The list shall include each well's characteristics and location.

The list shall include each well's characteristics and location. (Suggested Edits – Susan Douglas/VDH – Instead of listing this information, the GW-2 form could be provided.)

The Board shall provide the Department of Health annually with a list of wells registered during the previous year.

62.1-259. Certain withdrawals; permit not required.

No ground water withdrawal permit shall be required for (i) **withdrawals of less than 300,000 gallons a month**; (ii) temporary construction dewatering; (iii) temporary withdrawals associated with a state-approved ground water remediation; (iv) the withdrawal of ground water for use by a ground water heat pump where the discharge is reinjected into the aquifer from which it is withdrawn; (v) the withdrawal from a pond recharged by ground water without mechanical assistance; (vi) the withdrawal of water for geophysical investigations, including pump tests;

(vii) the withdrawal of ground water coincident with exploration for and extraction of coal or activities associated with coal mining regulated by the Department of Mines, Minerals and Energy; (viii) the withdrawal of ground water coincident with the exploration for or production of oil, gas or other minerals other than coal, unless such withdrawal adversely impacts aquifer quantity or quality or other ground water users within a ground water management area; (ix) the withdrawal of ground water in any area not declared a ground water management area; or (x) the withdrawal of ground water pursuant to a special exception issued by the Board.

§ 62.1-260. Permits for existing ground water withdrawals in existing ground water management areas.

A. Persons holding a certificate of ground water right or a permit to withdraw ground water issued prior to July 1, 1991, in the Eastern Virginia or Eastern Shore Groundwater Management Areas and currently withdrawing ground water pursuant to said certificate or permit shall file an application for a ground water withdrawal permit on or before December 31, 1992, in order to obtain a permit for withdrawals. The Board shall issue ground water withdrawal permits for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1987, and June 30, 1992, together with such savings as can be demonstrated to have been achieved through water conservation; however, with respect to a political subdivision, an authority serving a political subdivision or a community waterworks regulated by the Department of Health, the permit shall be issued for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1980, and June 30, 1992, together with such savings as can be demonstrated to have been achieved through water conservation.

B. Persons holding a certificate of ground water right issued on or after July 1, 1991, and prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas and currently withdrawing ground water pursuant to the certificate shall file an application for a ground water withdrawal permit on or before December 31, 1993, in order to obtain a permit for withdrawals. The Board shall issue ground water withdrawal permits for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1988, and June 30, 1993, together with such savings as can be demonstrated to have been achieved through water conservation.

C. Persons holding a permit to withdraw ground water issued on or after July 1, 1991, and prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas shall not be required to apply for a ground water withdrawal permit until the expiration of the term of the permit to withdraw ground water as provided in subsection C of § 62.1-266, and may

withdraw ground water pursuant to the terms and conditions of the permit to withdraw ground water. Such persons may apply for a ground water withdrawal permit allowing greater withdrawals of ground water than are allowed under an existing permit, and the Board in its discretion may issue a permit for such greater withdrawals, upon consideration of the factors set forth in § 62.1-263.

D. Persons holding a certificate of ground water right issued prior to July 1, 1992, or a permit to withdraw ground water issued prior to July 1, 1991, in the Eastern Virginia or Eastern Shore Groundwater Management Areas, who have not withdrawn ground water prior to July 1, 1992, may initiate a withdrawal on or after July 1, 1992, pursuant to the terms and conditions of the certificate or permit. The persons shall file an application for a ground water withdrawal permit on or before December 31, 1995, and may continue withdrawing ground water under the terms and conditions of their certificate or permit until the required ground water withdrawal permit application is acted on by the Board, provided that the ground water withdrawal permit application is filed on or before December 31, 1995. The Board shall issue a ground water withdrawal permit for the total amount of ground water withdrawn and applied to a beneficial use during any consecutive twelve-month period between July 1, 1992, and June 30, 1995, together with (i) such savings as can be demonstrated to have been achieved through water conservation and (ii) such amount as the Board in its discretion deems appropriate upon consideration of the factors set forth in § 62.1-263. This subsection shall not apply to a political subdivision, or an authority serving a political subdivision, holding a permit or certificate for a public water supply well for supplemental water during drought conditions, which shall apply for a ground water withdrawal permit as provided in § 62.1-265.

E. Persons withdrawing ground water for agricultural or livestock watering purposes in the Eastern Virginia or Eastern Shore Groundwater Management Areas on or before July 1, 1992, shall file an application for a ground water withdrawal permit on or before December 31, 1993, in order to obtain a permit for withdrawals. The Board shall issue ground water withdrawal permits for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1983 and June 30, 1993, together with such savings as can be demonstrated to have been achieved through water conservation.

F. Persons withdrawing ground water for agricultural or livestock watering purposes, or pursuant to certificates of ground water right or permits to withdraw ground water issued prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas, may continue such withdrawal until the required permit application is acted on by the Board, provided that the permit application is filed by the appropriate deadline.

G. Persons applying for a ground water withdrawal permit may request that they be permitted to withdraw more ground water than the amount to which they may be entitled based on their historic usage and water conservation as set forth in this section. The Board in its discretion may issue a permit for a greater amount than that which is based on historic usage and water conservation, upon consideration of the factors set forth in § 62.1-263.

H. Failure by any person covered by the provisions of subsection A, B, D or E to file an application for a ground water withdrawal permit prior to the expiration of the applicable period creates a presumption that any claim to withdraw ground water based on history of usage has been abandoned. In reviewing any application for a ground water withdrawal permit subsequently made by such a person, the Board shall consider the factors set forth in § 62.1-263. 1992, c. 812; 1994, cc. 513, 592.

§ 62.1-261. Permits for existing ground water withdrawals in newly established ground water management areas.

A. Persons withdrawing ground water in any area declared a ground water management area on or after July 1, 1992, shall file an application within six months after the ground water management area has been declared in order to obtain a permit for withdrawals. The Board shall issue permits for the total amount of ground water withdrawn during any consecutive twelve-month period in the five years preceding said declaration, together with such savings as can be demonstrated to have been achieved through water conservation.

B. Persons withdrawing ground water for agricultural or livestock watering purposes in any area declared a ground water management area on or after July 1, 1992, shall file an application within six months after the ground water management area has been declared in order to obtain a permit for withdrawals. The Board shall issue permits for the total amount of ground water withdrawn during any consecutive twelve-month period in the ten-year period preceding such declaration, together with such savings as can be demonstrated to have been achieved through water conservation.

C. Persons withdrawing ground water in any area declared a ground water management area on or after July 1, 1992, may continue such withdrawal until the required permit application is acted on by the Board, provided that the permit application is filed within the six-month period following the declaration.

D. Persons applying for a ground water withdrawal permit issued pursuant to this section may request that they be permitted to withdraw more ground water than the amount to which they

may be entitled based on their historic usage as set forth in this section. The Board in its discretion may issue a permit for a greater amount than that which is based on historic usage, upon consideration of factors set forth in § 62.1-263.

E. Failure by any person covered by the provisions of subsection A or B to file an application for a ground water withdrawal permit within the six months following the declaration of the ground water management area creates a presumption that any claim to withdraw ground water based on history of usage has been abandoned. In reviewing any application for a ground water withdrawal permit subsequently made by such a person, the Board shall consider the factors set forth in § 62.1-263.

1992, c. 812 .

(Suggested Edits/Addition – Susan Douglas/VDH)

62.1-266. Groundwater Withdrawal Permits.

The Board may issue any ground water withdrawal permit upon terms, conditions and limitations necessary for the protection of the public welfare, safety and health.

B. Applications for ground water withdrawal permits shall be in a form prescribed by the Board and shall contain such information, consistent with this chapter, as the Board deems necessary.

C. All ground water withdrawal permits issued by the Board under this chapter shall have a fixed term not to exceed ten years. The term of a ground water withdrawal permit issued by the Board shall not be extended by modification beyond the maximum duration, and the permit shall expire at the end of the term unless a complete application for a new permit has been filed in a timely manner as required by the regulations of the Board, and the Board is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit. Any permit to withdraw ground water issued by the Board on or after July 1, 1991, and prior to July 1, 1992, shall expire ten years after the date of its issuance. Permits issued in the Eastern Virginia Groundwater Management Area shall be coordinated in accordance with regulations developed by the Board such that the permits expire and renew at the same time.

D. Renewed ground water withdrawal permits shall be for a withdrawal amount that is sufficient to meet the Available Groundwater Supply and

~~is sufficient to meet~~ will not exceed the Available Groundwater Supply and (Suggested Edits – Susan Douglas/VDH)

“Available water supply” is used as if it is a requirement to be met, rather than a determined water level. E.g., in the new language in Sec. 62.1-266.D, the draft refers to a withdrawal amount that is “sufficient to meet the Available Groundwater Supply” – I suggest replacing “meet” with “sustain” or something along those lines. Same with the first sentence of the new Sec. 62.1-266.1. (Suggested Edits/Comments – Elizabeth Andrews – Virginia Coastal Policy Center)

Formatted: Indent: Left: 0"

includes such savings as can be demonstrated to have been achieved through water conservation, provided that a beneficial use of the permitted ground water can be demonstrated for the following permit term.

E. Any permit issued by the Board under this chapter may, after notice and opportunity for a hearing, be amended or revoked on any of the following grounds or for good cause as may be provided by the regulations of the Board:

1. The permittee has violated any regulation or order of the Board pertaining to ground water, any condition of a ground water withdrawal permit, any provision of this chapter, or any order of a court, where such violation presents a hazard or potential hazard to human health or the environment or is representative of a pattern of serious or repeated violations which, in the opinion of the Board, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations, or requirements;
2. The permittee has failed to disclose fully all relevant material facts or has misrepresented a material fact in applying for a permit, or in any other report or document required under this chapter or under the ground water withdrawal regulations of the Board;
3. The activity for which the permit was issued endangers human health or the environment and can be regulated to acceptable levels by amendment or revocation of the permit; or
4. There exists a material change in the basis on which the permit was issued that requires either a temporary or a permanent reduction or elimination of the withdrawal controlled by the permit necessary to protect human health or the environment.

F. No application for a ground water withdrawal permit shall be considered complete unless the applicant has provided the Executive Director of the Board with notification from the governing body of the county, city or town in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2. The provisions of this subsection shall not apply to any applicant exempt from compliance under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

G. A ground water withdrawal permit shall authorize withdrawal of a specific amount of ground water through a single well or system of wells, including a backup well or wells, or such other means as the withdrawer specifies.

62.1-266.1. Voluntary Allocation Agreements.

When withdrawals exceed the Available Groundwater Supply, the Board shall encourage, promote and recognize voluntary agreements among persons withdrawing groundwater that are subject to groundwater withdrawal permitting requirements and are in the same groundwater management area. When the Board finds that any such agreement, executed in writing and filed with the Board, achieves compliance with the Available Groundwater Supply
~~achieves compliance with~~ does not exceed the Available Groundwater Supply (Suggested Edits - Susan Douglas/VDH)

and is consistent with the intent, purposes and requirements of this chapter, the Board shall approve the agreement following a public hearing. The Board shall provide at least sixty days' notice of the public hearing to the public in general and individually to those persons withdrawing groundwater in the groundwater management area who are not parties to the agreement, and shall make a good faith effort to so notify conservation organizations

Comment: Susan Douglas/VDH – Can we be more specific as to what we mean by “conservation organizations” or which organizations?

and unregulated groundwater users. The Board shall be a party to the agreement. The agreement, until terminated, shall control in lieu of a formal order, rule, regulation or permit issued by the Board under the provisions of this chapter, and shall be deemed to be a case decision under the Administrative Process Act (§ 2.2-4000 et seq.). Any agreement shall be designed to meet the Available Groundwater Supply determination and specify the amount of water affected thereby.

Any agreement approved by the Board may include conditions which can result in its amendment or termination by the Board, following a meeting with the agreement participants and a public hearing, if the Board finds that it or its effect is inconsistent with the intent, purposes and requirements of this chapter. Such conditions may include (i) a determination by the Board that the agreement originally approved by the Board will not further the purposes of this chapter, (ii) a determination by the Board that circumstances have changed such that the agreement originally approved by the Board will no longer further the purposes by this chapter, or (iii) one or more parties to the agreement is not fulfilling its commitments under the agreement. The Board shall provide at least sixty days' notice of the public hearing to the public

in general and individually to those persons withdrawing groundwater in the groundwater management area who are not parties to the agreement, and shall make a good faith effort to so notify recreational user groups, conservation organizations and fisheries management agencies.

agreement, and shall make a good faith effort to so notify recreational user groups, conservation organizations and fisheries management agencies. (Suggested Edits/Deletions – Susan Douglas/VDH)

The conditions in such agreements shall be in force only in those times when the Available Groundwater Supply has been exceeded unless otherwise provided for in the agreement.

For the new Sec. 62.1-266.1, there are instances where the language is unclear, and Andrea explained that she quoted directly from the Surface Water Management Area statute. So we need to decide if we are going to stick with existing language or try to clarify it. For ex., “specify the amount of water affected thereby” (Scott said at the meeting that he has never been sure what exactly that means, so clarification could only help!), and “a determination by the Board that the agreement originally approved by the Board will not further the purposes of this chapter” (although perhaps it is more helpful to leave that one open-ended, to give the Board more leeway in unanticipated circumstances). (Suggested Edits/Comments – Elizabeth Andrews – Virginia Coastal Policy Center)

Also for the new Sec. 62.1-266.1, we discussed at the meeting the question of whether we wanted to also include unpermitted users in the voluntary allocation agreements concept (not sure what we decided - ?). We also discussed if we wanted to specify the actual amount used or the permitted amount (again, not sure what we decided, if anything). Finally, the language currently states that the SWCB “shall approve” an agreement following a public hearing – which makes the hearing unnecessary. I believe Andrea said this echoes the SWMA too – but I recommend that we amend it to say “the Board shall hold a public hearing prior to approving an agreement.” If the desire is to say that the SWCB shall approve agreements in order to make sure that the Board takes action, then it can be spelled out that “the Board shall approve an agreement if it contains X, Y and Z” or “the Board shall approve an agreement if it is not opposed by ...” or something like that. Along those same lines, we discussed the potential issue that some users might come to a voluntary agreement that provides for one of them to continue to make large withdrawals at a thin or very impactful point in the aquifer, so it seems some type of Board override is necessary in order to protect the sustainability of the resource. Not sure what we decided on that one, either. (Suggested Edits/Comments – Elizabeth Andrews – Virginia Coastal Policy Center)

Formatted: Indent: Left: 0", First line: 0"